facility to submit an alternative plan of correction to the state fire marshal for approval. If the state fire marshal approves the alternative plan of correction, the Department may require the facility to resubmit bids under Section 10.040.

Section 10.060 **Computation of life safety code adjustment.** If the request meets the criteria in Sections 10.020 to 10.050, the Department shall compute the life safety code adjustment to the special operating cost payment rate under items A to E.

A. Upon completion of the physical plant modifications and purchase of the additional depreciable equipment, the facility shall submit copies of invoices showing the total cost of the physical plant modifications and additional depreciable equipment to the Department.

B. The Department shall allow the lesser of the amount in item A or the final bid approved by the Department. The amount allowed shall be reduced by 75 percent of the funded depreciation that may be withdrawn for purchase or replacement of capital assets or payment of capitalized repairs as determined in Section 9.010, item E, subitem (4), and other savings or investment accounts of the provider or the provider group.

C. If a facility is financed by the Minnesota Housing Finance Agency, the facility must use amounts deposited in the development cost escrow account required by the Minnesota Housing Finance Agency to purchase physical plant modifications or additional depreciable equipment allowed under this part. The amount withdrawn from the development cost escrow account must be reimbursed to the facility as provided in Section 10.070. The facility must use the reimbursement to replace the amount withdrawn from the development cost escrow account as required by the Minnesota Housing Finance Agency.

D. If the amount determined in item B is less than $500 per licensed bed, the amount must be divided by the resident days from the cost report that was used to set the facility's total payment rate in effect on the date the statement of deficiencies was issued.

E. If the amount determined in item B is equal to or greater than $500 per licensed bed, the amount in excess of $500 per licensed bed must be reimbursed during the rate year following the rate year in which the statement of deficiencies was issued. The amount in excess of $500 per licensed bed must be divided by the resident days from the cost report that was used to set the facility's total payment rate for the rate year following the rate year in which the statement of deficiencies was issued.

Section 10.070 **Adjustment of special operating cost payment rate.** If the amount in Section 10.060, item B or C is greater than zero, the Department shall adjust the facility's

special operating cost payment rate under items A and B.

A. The per diem amount in Section 10.060, item D, must be added to the facility's special operating cost payment rate for the rate year identified in Section 10.060, item D, and will be effective on the first day of that rate year.

B. The per diem amount in Section 10.060, item E, must be added to the facility's special operating cost payment rate for the rate year identified in Section 10.060, item E, and shall be effective on the first day of that rate year.

Section 10.080 **Reimbursement limits.** If a life safety code adjustment to the special operating cost payment rate is allowed under this part, the cost of the physical plant modifications and additional depreciable equipment allowed in Section 10.060, item B, must not be claimed for reimbursement under other sections. The cost of the physical plant modifications and additional depreciable equipment not allowed under Section 10.060, item B, shall be capitalized and depreciated in accordance with Section 9.010.

Section 10.090 **Changes in one-time adjustment.** If a facility has been given a one-time adjustment under Section 7.030 and the Department determines under Section 10.020, item A, that the life safety code deficiency should be corrected under this part, the facility's one-time adjustment or the portion of that one-time adjustment that related to the life safety code deficiency shall be subtracted from the facility's total payment rate on the date the life safety code adjustment under this part is effective. If more than 50 percent of the one-time adjustment is subtracted from the facility's total payment rate under this subpart, the facility may apply for another one-time adjustment within the three-year period established in Section 7.030, item G.

SECTION 11.000 DETERMINATION OF TOTAL PAYMENT RATE.

Section 11.010 **Total payment rate.** The total payment rate must be the sum of the total operating cost payment rate, the special operating cost payment rate, and the property related payment rate.

Section 11.020 **Limitations to total payment rate.** The total payment rate must not exceed the rate paid by private paying residents for similar services for the same period. This limit does not apply to payments made by the Department for approved services for very dependent persons with special needs under Section 16.000.

Section 11.030 **Respite care payments.** Respite care is not a covered ICF/MR service. However, residents covered by other third party payers (counties, insurance companies, and private payers or home and community-based waivers) may be admitted for respite care services. Rates charged for respite care services must be identified separately. The provider must report the costs and resident days associated with providing respite care services, together with other facility costs and days. The Department will include all of the facility's allowed cost and resident days (including respite care costs and days) in determining the facility's payment rate for ICF/MR resident days.

Section 11.040 **Adjustment to total payment rate for phase-in of common reporting year.** A facility whose total payment rate established for the rate year beginning during calendar year 1985 will be in effect for a period greater than 12 months due to the phase-in of a common reporting year, shall receive for the months over 12 months, its total payment rate increased by the prorated annual percentage change in the all urban consumer price index (CPI-U) for Minneapolis/St. Paul as published by the Bureau of Labor Statistics between January 1984 and January 1985, new series index (1967=100). That adjusted total payment rate shall be in effect until September 30, 1986. This adjusted total payment rate must not be in effect for more than nine months.

Section 11.050 **Disaster-related provisions.**

A. Notwithstanding a provision to the contrary, a facility may receive payments for expenses specifically incurred due to a disaster. Payments will be based on actual documented costs for the period during which the costs were incurred, and will be paid as an add-on to the facility's payment rate, or as a lump sum payment. The actual costs paid will be reported on the next annual cost report as non-allowable costs, in order to avoid duplicate payment. Costs submitted for payments will be subject to review and approval by the Department. The Department's decision is final and not subject to appeal. Costs not paid in this manner may be claimed on the subsequent cost report for inclusion in the facility's payment rate.

B. For transfers, the rates continue to apply for evacuated facilities, and residents are not counted as admissions to facilities that admit them.

SECTION 12.000 RATE SETTING PROCEDURES FOR NEWLY CONSTRUCTED OR NEWLY ESTABLISHED FACILITIES OR APPROVED CLASS A TO B CONVERSIONS.

Section 12.010 **Interim payment rate.** A provider may request an interim payment rate for a newly constructed or newly established facility or for a facility converting more than 50 percent of its licensed beds from Class A beds to Class B beds provided that the conversion is approved by the Department. To receive an interim payment rate, the provider must submit a projected cost report to the extent applicable for the year in which the provider plans to begin operation or plans to convert beds. Section 7.010, item A, subitems (2), (3), and (4), Section 7.022, item E, Section 7.030, and Section 9.060 shall not apply to interim payment rates. The interim property related payment rate must be determined using projected resident days but not less than 80 percent of licensed capacity days. The effective date of the interim payment rate for a newly constructed or newly established facility must be the later of the first day a medical assistance recipient resides in the newly constructed or established bed or the date of medical assistance program certification. The effective date of the interim payment rate for a facility converting more than 50 percent of its licensed beds from Class A beds to Class B beds must be the later of the date on which 60 percent of the converted beds are occupied by residents requiring a Class B bed as determined by the Department or the date on which the beds are licensed as Class B beds by the Minnesota Department of Health. Prior to the effective date of the interim payment rate, the provider may submit a request to update the interim payment rate. After the effective date of the interim payment rate, no adjustments shall be made in the interim payment rate until settle-up.

The term "newly constructed or newly established" means a facility: (1) for which a need determination has been approved by the Department under state law; (2) whose program is newly licensed under Minnesota Rules and certified under Code of Federal Regulations, title 42, section 438.400 et. seq.; and (3) that is part of a proposal that meets the requirements of state law restricting discharges from a state regional treatment center.

The term does not include a facility for which a need determination was granted solely for other reasons such as: (1) the relocation of a facility; (2) a change in the facility's name, program, number of beds, type of beds, or ownership; or (3) the sale of a facility, unless the relocation of a facility to one or more service sites is the result of a voluntary closure of a facility under state law, in which case (3) does not apply.

The term does include a facility that converts more than 50 percent of its licensed beds from Class A to Class B residential or Class B institutional to serve persons discharged from state regional treatment centers on or after May 1, 1990, in which case (3) in the second paragraph

does not apply.

Section 12.020 **Interim payment rate settle-up.** The interim payment rate must not be in effect more than 17 months. When the interim payment rate begins between August 1 and December 31, the facility shall file settle-up cost reports for the period from the beginning of the interim payment rate through December 31 of the following year. When the interim payment rate begins between January 1 and July 31, the facility shall file settle-up cost reports for the period from the beginning of the interim payment rate to the first December 31 following the beginning of the interim payment rate.

A. An interim payment rate established on or before December 31, 1985, is subject to retroactive upward or downward adjustment based on the settle-up cost report and according to rules in effect when the interim rate was established.

B. An interim payment rate established on or after January 1, 1986, is subject to retroactive upward or downward adjustment based on the settle-up cost report, except that:

(1) Section 7.010, item A, subitems (2), (3), and (4); Section ~~7.020~~ 7.022, item E; Section 7.030; and Section 9.060 do not apply;

(2) the settle-up property related payment rate must be calculated using the lesser of resident days or 96 percent of licensed capacity days, but not less than 80 percent of licensed capacity days;

(3) the settle-up operating cost payment rates must be determined by dividing the allowable historical operating costs by the greater of resident days or 80 percent of licensed capacity days;

(4) the settle-up special operating cost payment rate must be determined by dividing the allowable historical special operating costs by the greater of resident days or 80 percent of licensed capacity days; and

(5) the settle-up total payment rate must not exceed the interim payment rate by more than 0.4166 percent for each full month between the effective date of the interim payment rate period and the end of the first fiscal period.

Section 12.030 **Total payment rate for nine-month period following settle-up period.** For the nine-month period following the settle-up period, the total payment rate must be determined according to items A to C.

A. The allowable historical operating cost per diems must be determined in accordance with all sections except that:

(1) Section 7.010, item A, subitems (2), (3), and (4); Section ~~7.020~~ 7.022, item E; Section 7.030; and Section 9.060 do not apply;

(2) the resident days must be the greater of an annualization of the resident days in the last three months of the interim reporting period or the s in the interim reporting period by not less than 85 percent of licensed capacity days; and

(3) the allowable historical operating cost per diems must be adjusted by multiplying those per diems by 9/12 of the percentage change in the all urban consumer price index (CPI/U) of Minneapolis/St. Paul as published by the Bureau of Labor Statistics between the two most recent Decembers before the beginning of the rate year, new series index (1967=100).

B. The special operating cost payment rate must be determined by dividing the allowable historical special operating costs by the greater of s or 85 percent of licensed capacity days.

C. The property related payment rate must be determined according to these sections.

Section 12.040 **Payment rate during the first rate year following the interim rate period.** The first total payment rate for the first rate year after the end of the interim rate period must be based on the settle-up cost report and must be calculated as in Section 12.030, except that the allowable historical operating cost per diems shall be adjusted in accordance with Section 7.022, item A.

SECTION 13.000 APPEAL PROCEDURES.

Section 13.010 **Scope of appeals.** A decision by the Department may be appealed by the provider, provider group, or a county welfare or human services board if the following conditions are met:

A. the appeal, if successful, would result in a change to the facility's total payment rate;

B. the appeal arises from application of these sections; and

C. the dispute over the decision is not resolved informally between the Department and the appealing party within 30 days of filing the written notice of intent to appeal under Section 13.020, item A.

Section 13.020 **Filing of appeals.** To be effective, an appeal must meet the following criteria:

A. The provider, provider group, or county welfare or human services board must notify the Department in writing of its intent to appeal within 30 days of receiving the total payment rate determination or decision which is being appealed. A written appeal must be filed with the Department within 60 days after receiving the total payment rate determination or decision which is being appealed.

B. The appeal must specify:

(1) each disputed item and the reason for the dispute;

(2) the computation and the amount that the provider believes to be correct;

(3) an estimate of the dollar amount involved in each disputed item;

(4) the authority in statute or rule upon which the provider is relying for each disputed item; and

(5) the name and address of the person or firm with whom contacts may be made regarding the appeal.

Section 13.030 **Resolution of appeal.**

A. Unless item B applies, the appeal shall be heard under Minnesota's contested case provisions.

B. Upon agreement of both parties, the dispute shall be resolved informally through any informal dispute resolution method such as settlement, mediation, or modified appeal procedures established by agreement between the Department and the Chief Administrative Law Judge.

Section 13.035 **Expedited appeal review.**

A. Within 120 days of the date an appeal is due according to Section 13.020, item A, the Department shall review an appealed adjustment equal to or less than $100 annually per licensed bed of the provider, make a determination concerning the adjustment, and notify the provider of the determination. Except as allowed in item G, this review does not apply to an appeal of an adjustment made to, or proposed on, an amount already paid to the provider. In this section, an adjustment is each separate disallowance, allocation, or adjustment of a cost item or part of a cost item as submitted by a provider according to forms required by the Commissioner.

B. For an item on which the provider disagrees with the results of the determination of the Department made under item A, above, the provider may, within 60 days of the date of the review notice, file with the office of administrative hearings and the Department its written argument and documents, information, or affidavits in support of its appeal. If the provider fails to make a submission in accordance with this item, the Department's determinations on the disputed items must be upheld.

C. Within 60 days of the date the Department received the provider's submission under item B, the Department may file with the office of administrative hearings and serve upon the provider its written argument and documents, information, and affidavits in support of its determination. If the Department fails to make a submission in accordance with this item, the Administrative Law Judge shall proceed pursuant to item D based on the provider's submission.

D. Upon receipt by the office of administrative hearings of the Department's submission made under item C or upon the expiration of the 60-day filing period, whichever is earlier, the Chief Administrative Law Judge shall assign the matter to an Administrative Law Judge. The Administrative Law Judge shall consider the submissions of the parties and all relevant rules, statutes, and case law. The Administrative Law Judge may request additional argument from the parties if it is deemed necessary to reach a final decision, but shall not allow witnesses to be presented or discovery to be made in the proceeding. Within 60 days of receipt by the office of administrative hearings of the Department's submission or the expiration of the 60 day filing period in item C, whichever is earlier, the Administrative Law Judge shall make a final decision on the items in issue, and shall notify the provider and the Department by first-class mail of the decision on each item. The decision of the Administrative Law Judge is the final administrative decision, is not appealable, and does not create legal precedent, except that the Department may make an adjustment contrary to the decision of the Administrative Law Judge based upon a subsequent cost report amendment or

field audit that reveals information relating to the adjustment that was not known to the Department at the time of the final decision.

E. For a disputed item otherwise subject to the review set forth in this subdivision, the Department and the provider may mutually agree to bypass the expedited review process and proceed to a contested case hearing at any time prior to the time for the Department's submission under item C.

F. When the Department determines that the appeals of two or more providers otherwise subject to the review set forth in this section present the same or substantially the same adjustment, the Department may remove the disputed items from the review in this section, and the disputed items shall proceed in accordance with the contested case procedures. The Department's decision to remove the appealed adjustments to contested case proceeding is final and is not reviewable.

G. For a disputed item otherwise subject to the review in this section, the Department or a provider may petition the Chief Administrative Law Judge to issue an order allowing the petitioning party to bypass the expedited review process. If the petition is granted, the disputed item must proceed in accordance with the contested case procedures. In making the determination, the Chief Administrative Law Judge shall consider the potential impact and precedential and monetary value of the disputed item. A petition for removal to contested case hearing must be filed with the Chief Administrative Law Judge and the opposing party on or before the date on or before the date on which its submission is due under item B or C. Within 20 days of receipt of the petition, the opposing party may submit its argument opposing the petition. Within 20 days of receipt of the argument opposing the petition, or if no argument is received, within 20 days of the date on which the argument was due, the Chief Administrative Law Judge shall issue a decision granting or denying the petition. If the petition is denied, the petitioning party has 60 days from the date of the denial to make a submission under item B or C.

H. The Department and a provider may mutually agree to use the procedures set forth in this section for any disputed item not otherwise subject to this section.

I. Nothing shall prevent either party from making its submissions and arguments under this section through a person who is not an attorney.

J. Effective May 1, 1990, this section applies to all appeals for rate years beginning on or after June 30, 1988.

Section 13.038 **Special appeals resolution project.** Effective October 1, 1993, a new appeal review process will be used to resolve rate appeals. The Department will issue a final determination on each appeal within a year. Providers who do not agree with the Department review may have a formal hearing.

Section 13.040 **Payment rate during appeal period.** The total payment rate established by the Department shall be the total payment rate paid to the provider while the appeal is pending.

Section 13.050 **Payments after resolution of appeal.** Upon resolution of the appeal any overpayments or underpayments shall be paid under Section 2.130.

Section 13.060 **Appeal expenses.** Expenses incurred in the appeal or for individual items under appeal will be reimbursed to the provider to the extent that:

A. the provider is successful on each disputed item appealed; and

B. this amount is not in excess of limits.

SECTION 14.000 VOLUNTARY RECEIVERSHIP.

Section 14.010 **Receivership agreement.** A majority of controlling individuals of a residential program may at any time ask the Department to assume operation of the residential program through appointment of a receiver. On receiving the request, the Department may enter into an agreement with a majority of controlling individuals and become the receiver and operate the program under conditions acceptable to both the Department and the majority of controlling individuals. The agreement will specify the terms and conditions of the receivership and preserve the rights of the persons being served by the program. A receivership set up under this section terminates at the time specified by the parties to the agreement.

Section 14.020 **Management agreement.** When the Department agrees to become the receiver of a program, the Department may enter into a management agreement with another entity or group to act as the managing agent during the receivership period. The managing agent will be responsible for the day-to-day operations of the residential program subject at all times to the review and approval of the Department. A reasonable fee may be paid to the managing agent for the performance of these services.